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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mandex, Inc.--Reconsideration

File: B-241841.2

Date: July 23, 1991

Floyd C. Stilley, Esq., for the protester.
Robert C. Arsenoff, Esq., and John W. Van Schaik, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Request for reconsideration is denied where protester's arguments are legally irrelevant to the basis for the initial protest decision and, thus, provide no grounds to reverse or modify that decision.

DECISION

Mandex, Inc. requests reconsideration of our decision, Mandex, Inc., B-241841, Mar. 6, 1991, 91-1 CPD ¶ 253, in which we denied its protest that the Army made an improper cost realism adjustment to its best and final offer (BAFO) under request for proposals (RFP) No. DAAD07-90-R-0005.

We deny the request for reconsideration.

As we explained in our original decision, Mandex's initial offer under the solicitation was premised on a proposed accounting change in its established method of calculating general and administrative (G&A) rates. The Defense Contract Audit Agency (DCAA) advised Mandex that it should remain on its previously-approved method of calculating G&A rates and that it should apply to the Army's administrative contracting officer (ACO) for approval of the proposed change prior to its further presentation in a proposal. As we further explained in our original decision, Mandex applied for such approval and, in doing so, acknowledged to the ACO that it should have first sought his approval and requested that the approval process (which involved DCAA recommendations to the ACO) be expedited. During discussions, the procurement contracting officer (PCO) advised Mandex that he could not accept the firm's G&A rate based on its proposed accounting change and that its BAFO cost would be adjusted upward using rates under the previously-approved G&A calculation method unless its accounting change had been approved or its BAFO


included ceilings on G&A rates. Although DCAA may have verbally communicated its "approval" of the proposed change to Mandex prior to the submission of BAFOs, the ACO had not approved the change by that time. Accordingly, and since the BAFO contained no G&A ceilings, the PCO used the rates based on Mandex's only approved accounting method and made an upward adjustment in the firm's proposed costs which displaced it as the low offeror.

In its protest, Mandex's essential position was that, for purposes of proposal evaluation, ACO approval was a formality and only DCAA approval was required to avoid an upward adjustment of its rates. In denying the protest, we noted that the protester was on constructive notice of the ACO's authority to approve such changes by virtue of RFP clauses to that effect. More important, however, our decision turned on Mandex's actual knowledge that ACO approval of accounting changes was required, as evidenced by the firm's application to the ACO for such approval. We also noted that if Mandex's oral communication with the Army and DCAA created any confusion as to who had approval authority, Mandex was obligated by the solicitation to seek written clarification from the PCO--which it did not. Under these circumstances, we found no basis for disturbing the cost realism adjustment since the PCO could not know which G&A computation method eventually would be approved by the ACO.

In its request for reconsideration, Mandex argues that our citation to the RFP clauses serving to indicate its constructive notice of the relative roles of DCAA and the ACO in the approval process was misplaced since these clauses, in its view, are strictly related to matters of contract administration and not proposal evaluation. Mandex also argues that we mischaracterized its position regarding the respective roles of DCAA and the ACO in the process. Finally, Mandex reasserts its position that, at DCAA's request, it signed a firm commitment to use its newly-proposed G&A computation method during contract performance and that we erroneously accepted an unsworn statement from an Army auditor denying that such a document exists.

Even if Mandex were correct in each of these arguments, they simply are irrelevant to the resolution of the protest. Our decision turned on the fact that any changes in Mandex's accounting system needed ACO approval to be effective in the instant procurement. Moreover, since ACO approval is required by the RFP and applicable regulations, in the absence of such approval, or a ceiling on G&A rates in the protester's BAFO (as required during discussions), the PCO properly used the previously-approved rates in his cost realism analysis. Mandex's present arguments do not in any way change these basic conclusions.

Thus, Mandex has presented no basis for concluding that our decision contained errors of fact or law which warrant its reversal or modification. See Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1991); Travel Centre--Recon., B-236061.3, Mar. 22, 1990, 90-1 CPD ¶ 316. Accordingly, the request for reconsideration is denied.


James F. Hinchman
General Counsel